



DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-COLO-31886; GPO Deposit Account 4311H2]

RIN 1024-AE39

Colonial National Historical Park; Vessels and Commercial Passenger-Carrying Motor Vehicles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends the special regulations for Colonial National Historical Park. This rule removes a regulation that prevents the Superintendent from designating sites within the park for launching and landing private vessels. The rule also removes outdated permit and fee requirements for commercial passenger-carrying vehicles.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The comments received on the proposed rule are available on www.regulations.gov in Docket ID: NPS-2020-0004

FOR FURTHER INFORMATION CONTACT: Steven Williams, Acting Superintendent, Colonial National Historical Park. Phone: (757) 898-3400; Email: Steven_Williams@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Colonial National Historical Park is located along the James and York Rivers and encompasses the historic Jamestown Island, Colonial Parkway, and the Yorktown Battlefield. There are also small, inland parcels of the park located at Greenspring,

Gloucester Point, and Fort Story. The park tells the story of the Colonial era from the origins of the occupancy of Jamestown Island in 1607 to the last major battle of the Revolutionary War at Yorktown in 1781. These two sites are connected by the Colonial Parkway, which winds 23 miles through scenic forests, over waterways, along river banks, and under Colonial Williamsburg. Much of the park is surrounded by water and includes an extensive amount of shoreline. All of the waterways in the area are a part of the Captain John Smith Chesapeake National Historic Trail that overlays the entire Chesapeake Bay and a large portion of its navigable tributaries. The park and the national historic trail are both administered by the National Park Service (NPS) and go hand-in-hand in this area of Virginia.

Final Rule

Launching and Retrieving Vessels.

Since the park was established in the 1930s, the NPS has prohibited the launching or landing of watercraft, except in emergency situations. The current prohibition at 36 CFR 7.1(a) states that, except in emergencies, no privately owned vessel shall be launched from land within the park and no privately owned vessel shall be beached or landed on land within the park. Consistent with the 2003 Record of Decision for the Jamestown Project Development Concept Plan, the NPS has been exploring new opportunities for boating within the park. Local partners and members of the community have approached the NPS to discuss funding the construction of potential launch sites to better connect a variety of visitors to the shared history of the area. The NPS and its partners share an interest in establishing access to the James and York Rivers, and thus the Captain John Smith Chesapeake National Historic Trail, for water-based educational and recreational activities.

In order to allow the NPS to pursue these management objectives, this rule removes the special regulation at 36 CFR 7.1(a). Without this park-specific prohibition,

the launching and landing of vessels will be governed by NPS general regulations at 36 CFR 3.8(a)(2). This regulation prohibits the launching or recovering (i.e. retrieval) of a vessel, except at launch sites designated by the Superintendent. Under this general regulation, the Superintendent of a park has the discretion to designate launch and retrieval sites within the park. Under NPS policy, this would only occur if the Superintendent determines that the use of those sites for boating activities is appropriate to the purpose for which the park was established and can be sustained without causing unacceptable impacts. See NPS Management Policies 8.1.1. The Superintendent would provide notice to the public of any such designation using one or more of the methods set forth in 36 CFR 1.7.

Commercial Passenger-Carrying Motor Vehicles.

This rule also removes the special regulations for the park at 36 CFR 7.1(b). These regulations require a permit for the operation of commercial passenger-carrying motor vehicles within the park and establish a fee structure for obtaining a permit. For each seat carrying a passenger, an annual permit costs \$3.50 and a quarterly permit costs \$1. One-day permits are available for \$1 (up to 5-passenger vehicles) or \$3 (over 5 passenger vehicles). 36 CFR 7.1(b)(1) through (4).

The permit requirement is unnecessary because it is redundant with the NPS general regulation at 36 CFR 5.3, which requires a permit, contract, or other written agreement in order to engage in business operations within a park area. The NPS uses commercial use authorizations (CUAs) to authorize commercial passenger-carrying motor vehicles. A CUA is a type of permit that allows an individual, group, company, or other for-profit entity to conduct commercial activities and provide specific visitor services within a unit of the National Park System.

The fee structure in 36 CFR 7.1(b) is over 30 years old. The NPS no longer charges those fees because they would not come close to offsetting the increasing

administrative costs of managing commercial passenger-carrying vehicles within the park. Instead, the NPS charges an entrance fee for commercial passenger-carrying vehicles under section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) and CUA fees under 54 U.S.C. 101925.

Summary of Public Comments

The NPS published a proposed rule in the Federal Register on October 6, 2020 (85 FR 63062). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through December 7, 2020. A total of 73 comments were submitted and reviewed. Many commenters supported the proposed rule and did not raise any issues or suggest any changes. Several commenters supported the potential of launch and retrieval sites to create recreational and educational opportunities in the park and a stronger connection with local communities. Some commenters raised concerns or questions about the proposed rule that the NPS summarizes and responds to below. After considering the public comments and after additional review, the NPS did not make any changes to the rule.

1. Comment: Several commenters asked whether the NPS will evaluate potential impacts to the environment before designating launch and retrieval sites within the park. Commenters raised concerns that increased boating activity would harm wildlife and submerged vegetation, erode shorelines, degrade water quality and introduce aquatic invasive species.

NPS Response: Decisions to construct and designate launch and retrieval sites will be subject to compliance with the National Environmental Policy Act, which means the NPS will evaluate potential impacts to the environment from construction activities and the expected use of the launch and retrieval sites prior to making such decisions. The Superintendent may develop sites and allow the launching and retrieval of vessels only if

such activity is appropriate to the purpose for which the park was established and can be sustained without causing unacceptable impacts to the environment.

2. *Comment:* One commenter stated that the NPS should undergo notice-and-comment rulemaking prior to designating launch and retrieval sites within the park in order to allow interested parties to comment.

NPS Response: NPS general regulations at 36 CFR 3.8(a)(2) provide the Superintendent with discretionary authority to designate launch and retrieval sites within the park. The Superintendent may exercise this discretionary authority at the park level without the need to promulgate special regulations, which would require notice-and-comment rulemaking under the Administrative Procedure Act. Many NPS regulations give the Superintendent similar discretionary authorities to designate areas for visitor use activities. See, for example, regulations allowing the Superintendent to designate: (1) campsites (36 CFR 2.10); (2) trails, routes and areas for the use of use of horses or pack animals (36 CFR 2.16); and (3) areas for using roller skates, skateboards, roller skis, coasting vehicles, or similar devices (36 CFR 2.20). In contrast to 36 CFR 3.8(a)(2) and regulations that provide similar discretionary authority to Superintendents, other NPS regulations specifically require rulemaking. See, for example, regulations governing the use of: (1) aircraft (36 CFR 2.17); (2) snowmobiles (36 CFR 2.18); (3) personal watercraft (36 CFR 3.9); and (3) motor vehicles off park roads and parking areas (36 CFR 4.10).

Even though 36 CFR 3.8(a)(2) does not require a special regulation, the NPS will provide interested stakeholders with an opportunity to review and comment on proposed launch sites through the Planning, Environment and Public Comment (PEPC) website (<https://parkplanning.nps.gov/>). All discretionary actions taken by the Superintendent must be compiled in writing, updated annually, and made available to the public upon request. 36 CFR 1.7(b). This compilation is referred to as the Superintendent's

Compendium. The Superintendent will identify designated launch and retrieval sites in the Superintendent's Compendium for the park, which is available on the park's website (<https://www.nps.gov/colo/learn/management/lawsandpolicies.htm>).

3. Comment: Several commenters asked the NPS to clarify the types of vessels that could be allowed to launch and land within the park. Many commenters supported the use of nonmotorized vessels only and suggested that motorized vessels be prohibited in order to preserve the visitor experience on the beaches and the pristine nature and soundscape of the park.

NPS Response: NPS general regulations at 36 CFR 3.8(a)(2) allow the Superintendent to designate launch and retrieval sites for "vessels," which are defined broadly in 36 CFR 1.4 to mean "every description of watercraft, or other artificial contrivance used, or capable of being used, as a means of transportation on the water." As a result, the Superintendent will have the discretion to allow motorized vessels to launch and land from designated sites in the park. The Superintendent may limit use to nonmotorized vessels, however, if that is appropriate given the purpose of the park and potential impacts to the environment or other park visitors from motorized vessels. At this time, the NPS does not plan to allow motorized vessels to launch and land from designated sites within the park.

4. Comment: Several commenters suggested specific launch and retrieval sites within the park, including sites along the York River, James River, College Creek, and Mill Creek. Other commenters identified sites that should not be considered due to the potential for adverse visual impacts to the historical character of certain locations within the park, including Jamestown Island and the Yorktown Battlefield. One commenter requested that the NPS select sites that would minimize trail and sidewalk construction.

NPS Response: The NPS will engage with the public prior to site selection to better understand potential impacts to resources and visitors, support for, and controversy

associated with a particular location. The NPS will evaluate existing conditions and potential management strategies at potential sites within the park to serve a diversity of visitor needs and enhance the quality of the visitor experience. A decision to develop a site for launch and retrieval facilities will take into account both primary impacts of development (such as noise, air, and water pollution), and secondary impacts (including cumulative effects over time) that recreational use associated with the development may have on park resources and visitor enjoyment. Any launch location will be carefully sited and designed to avoid unacceptable adverse effects on historical sites and aquatic and riparian habitats, and to minimize conflicts between boaters and other visitors who enjoy the park.

5. *Comment:* Several commenters questioned the cost of constructing launch and retrieval sites. Some commenters stated that the NPS would not be able to justify the cost of building launch sites for motorized vessels due to the availability of nearby marinas that can be used for this purpose outside of the park. One commenter expressed concern that new boating activity could have broader cost implications for the NPS if it leads to increased traffic on the parkway, which the commenter stated is already in need of rehabilitation.

NPS Response: The planning process for selecting launch and retrieval sites will consider the costs of initial construction as well as ongoing maintenance. Local partners and members of the community have approached the NPS to discuss funding the construction of potential launch sites to better connect a variety of visitors to the shared history of the area. The Superintendent is exploring different opportunities for cost-sharing, such as fundraising through a Friends Group or receiving direct support from the local county. This would alleviate the financial burden to the NPS associated with initial construction costs. The Superintendent will not select a site for development if the NPS would not be able to cover these costs in a manner that would maintain the site in good

working order. The evaluation of costs will include those associated with the site itself and those associated other park facilities, including roads, that would be impacted by increased visitation caused by the launch and retrieval sites. The NPS will consider the availability of nearby launch and retrieval sites when determining the magnitude of potential benefits to park visitors from the development of sites within the park.

6. Comment: One commenter expressed concern that increased boating activity will lead to commercialization and economic expansion that will negatively impact park values.

NPS Response: This rule will not change the level of commercial activity within the park. Engaging in any business within the park is prohibited except in accordance with the provisions of a permit, contract, or other written agreement. 36 CFR 5.3. This prohibition on commercial activity within the park applies to commercial passenger-carrying vessels, which are not authorized under 36 CFR 3.8(a)(2) without some separate written authorization. At this time, the NPS is not considering any written authorization that would allow commercial passenger-carrying vessels to operate from launch sites within the park.

7. Comment: Several commenters questioned how the NPS will promote boating safety if launch and retrieval sites are designated by the Superintendent. One commenter expressed concern that designating launch and retrieval sites will lead to personal watercraft (PWC) use within the park, which would present a high risk of injury and fatality for park visitors.

NPS Response: The NPS will provide information to park visitors about boating safety if launch and retrieval sites are developed and designated within the park. This information will be provided at launch sites and on the park's website (www.nps.gov/colo). Under no circumstances would PWCs be allowed to launch and land from within the boundary of the park. This is prohibited by NPS general regulations

at 36 CFR 3.9. PWC use that originates and occurs outside the boundary of the park is not subject to NPS jurisdiction.

8. Comment: Several commenters encouraged the NPS to work with Indian tribes to select launch and retrieval sites and to create an interpretive program associated with boating activities that represents the experience of Virginia Indians in the shared landscape of the park.

NPS Response: The NPS will consult with federally recognized tribes if and when launching and retrieval sites for vessels are proposed for designation. The NPS recognizes that the Pamunkey Tribe may be particularly interested in siting decisions because of the potential for increased water access to the shorelines of Jamestown Island which is a traditional area and has historical significance for the tribe.

9. Comment: Several commenters expressed concern that removing the permit requirement for commercial passenger-carrying motor vehicles would result in less revenue for the NPS and more commercial vehicle use of the parkway, which would harm park resources.

NPS Response: Revenue to the NPS from commercial passenger-carrying vehicles will not be affected by this rule. The fee structure being removed is over 30 years old and is no longer implemented by the NPS because the stated fees would not come close to offsetting the increasing administrative costs of managing commercial passenger-carrying vehicles within the park. In order to offset these costs, the NPS charges an entrance fee for commercial passenger-carrying vehicles under section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) and CUA fees under 54 U.S.C. 101925. The NPS does not expect the rule to change the level of commercial vehicle use of the parkway because the NPS has not used the permit and fee structure in the special regulations for many years.

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Regulations for Vessels and Commercial Passenger-Carrying Motor Vehicles at Colonial National Historical Park.” The document may be viewed at www.regulations.gov by searching for “1024-AE39.”

Congressional Review Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the CRA. This rulemaking:

- (a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rulemaking complies with the requirements of Executive Order 12988. This rulemaking:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to

eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rulemaking under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. During a scheduled formal consultation about park issues with the Chiefs of the Chickahominy, Eastern Chickahominy, Mattaponi, Nansemond, Pamunkey, Rappahannock, and Upper Mattaponi, the NPS briefed them on the proposed change for launching and landing private vessels at the park. All of the Chiefs expressed their support for the rule and the opportunity it would provide for the tribes to expand their interpretative programs to tell Native stories in Native places. The NPS will consult with federally recognized tribes if and when launching and retrieval sites for vessels are designated.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National

Environmental Policy Act of 1969 (NEPA) is not required because the rulemaking is covered by a categorical exclusion. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i). The environmental effects of removing 36 CFR 7.1(a) are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Decisions to construct and designate launching and retrieval sites will later be subject to the NEPA process, either collectively or case-by-case. The nature of the proposal to remove 36 CFR 7.1(b) is administrative, financial and legal. The NPS has determined the rulemaking does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211. The rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

§ 7.1 [Removed and Reserved]

2. Remove and reserve § 7.1.

Shannon A. Estenoz,
Assistant Secretary for Fish and Wildlife and Parks.

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